

**Department of State  
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Sequence Number: 02-02-09  
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## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.*

<b>Agency/Board/Commission:</b>	Tennessee Ethics Commission
<b>Division:</b>	
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**Revision Type:**

☐ Amendment  
☒ New  
☐ Repeal

**Rule(s) Revised:**

Chapter Number	Chapter Title
0580-05	Rules Pertaining to Prohibited Conduct
Rule Number	Rule Title
0580-05-.01	Purpose and Scope
0580-05-.02	Definitions
0580-05-.03	Prohibited Activities
0580-05-.04	Personal Gift Exception

Chapter 0580-05  
Rules Pertaining to Prohibited Conduct

New Rules

0580-05-.01 Purpose and Scope.

These rules are promulgated for the purpose of proscribing prohibited conduct and exceptions to these prohibitions for lobbyists, employers of lobbyists, candidates and officials of the executive and legislative branches, and immediate family members of such candidates and officials, pursuant to T.C.A. §§ 3-6-304 through 3-6-305.

Authority: T.C.A. §§ 3-6-107(1), 3-6-304 through 305, 3-6-308(a)(9).

0580-05-.02 Definitions.

- (1) Commission. The Tennessee Ethics Commission.
- (2) Official. A person who is an "official in the executive branch" of state government, as defined in Tenn. Code Ann. § 3-6-301(19), or a person who is an "official in the legislative branch" of state government, as defined in Tenn. Code Ann. § 3-6-301(20).

Authority: T.C.A. §§ 3-6-107(1), 3-6-103(a)(1), 3-6-301.

0580-05-.03 Prohibited Activities.

- (1) No lobbyist, employer of a lobbyist, Official, or such Official's immediate family, as those terms are defined in these rules and by T.C.A. § 3-6-301, shall engage in any conduct prohibited by T.C.A. § 3-6-304.
- (2) No lobbyist or employer of a lobbyist shall provide, directly or indirectly, to a candidate for public office, an Official, or the immediate family of such candidate or Official, a gift as prohibited in T.C.A. § 3-6-305, nor shall the candidate, Official, or immediate family thereof accept such a gift, except as allowed by T.C.A. § 3-6-305 or these Rules.
- (3) The ban on campaign contributions set forth in T.C.A. § 3-6-304(j) does not prohibit contributions by a lobbyist to an incumbent legislator or governor that are made in support of his or her election to a federal office.
- (4) Campaign contributions from a lobbyist to an incumbent legislator who is running for a local public office are prohibited.

Authority: T.C.A. §§ 3-6-107(1), 2-10-310(a)(2), 3-6-301(12), 3-6-304 through 3-6-305, 3-6-308(a)(9).

0580-05-.04 Personal Gift Exception.

- (1) Gifts given for a non-business purpose and motivated by a close personal friendship are not subject to the gift ban pursuant to T.C.A. § 3-6-305(b)(3).
- (2) In determining whether a gift is motivated by a close personal friendship, the Commission may consider factors including, but not limited to, the following, giving them such weight as may be appropriate in the facts and circumstances of each case:
  - (a) Whether the lobbyist or individual who is an employer of a lobbyist paid for or provided the gift out of his or her own personal funds or account, or whether the gift is instead being charged to the lobbyist's business account, an employer of the lobbyist, or a lobbying firm.
  - (b) Whether the cost of the gift is taken as a business deduction by the lobbyist, a lobbying firm, or employer of the lobbyist.

- (c) Whether there has been a history of gift giving between the lobbyist or the employer of a lobbyist, on the one hand, and the candidate, Official, or his or her immediate family, on the other hand; and the nature of the previous gift giving.
- (d) Whether the candidate, Official, or immediate family member has reciprocated with a gift to the lobbyist or the employer of the lobbyist in the past, and whether the gift has been of similar value.
- (e) Whether the lobbyist or the employer of a lobbyist provides the same or similar items to other candidates, Officials, or the immediate families of such candidates or Officials at the same time, who are not also close personal friends.
- (f) Whether the timing and circumstances of the gift are appropriate; whether a lobbyist or an employer of a lobbyist has a matter that is currently before or will shortly be before the Official.
- (g) In the case of a gift given by an individual who works for an employer of a lobbyist, whether the gift-giver is involved in lobbying activities on behalf of the employer.

Authority: T.C.A. § 3-6-107(1), 3-6-305(b)(3), 3-6-308.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Donald J. Hall (Chairman)	X				
R. Larry Brown	X				
Thomas J. Garland	X				
Linda W. Knight		X			
Dianne Neal	X				
Benjamin S. Purser, Jr.	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Ethics Commission on July 22, 2008, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.



Date: 1-2-09

Signature: [Handwritten Signature]

Name of Officer: Bruce A. Androphy

Title of Officer: Executive Director

Subscribed and sworn to before me on: 1-2-09

My Commission Expires NOV. 22, 2010

Notary Public Signature: [Handwritten Signature]

My commission expires on: 11/22/10

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Robert E. Cooper, Jr.  
Attorney General and Reporter

1-15-09

Date

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Filed with the Department of State on: 2/3/09

Effective on: 6/26/09

[Handwritten Signature]

Tre Hargett  
Secretary of State

### **Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

#### **Economic Impact Statement**

1. Types of small businesses directly affected:  
These new rules would not impact small businesses as they impose no new requirements on business owners and any requirement required is mandated by statute.
2. Projected reporting, recordkeeping and other administrative costs:  
There are no projected administrative costs as a result of these new rules.
3. Probable effect on small businesses:  
There is no expected adverse impact on small business as a result of these new rules.
4. Less burdensome, intrusive or costly measures:  
There are no alternative means available to accomplish these objectives. These changes could all be considered "housekeeping" or "clarifying of existing statute(s)" in nature.
5. Comparison with federal and state counterparts:  
The promulgation of these rules is similar to the practice of the federal government and other states.
6. Effect of possible exemption of small businesses:  
There is no expected exemption of small businesses as a result of these new rules or the effect thereof.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rules 0580-05 are promulgated for the purpose of proscribing prohibited conduct and exceptions to these prohibitions for lobbyists, employers or lobbyists, candidates and officials of the executive and legislative branches, and immediate family members of such candidates and officials., pursuant to T.C.A. §§ 3-6-304 and 305. As these are new rules, they do not effectuate any change to previous regulations.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These proposed rules are made pursuant to T.C.A. §§ 3-6-304 and 3-6-305. Rule 0580-05-.04 is mandated by T.C.A. § 3-6-305(b)(3).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These new rules of the Tennessee Ethics Commission will affect candidates to and existent "officials in the executive branch" as defined by T.C.A. § 3-6-301(20), "officials in the legislative branch" as defined by T.C.A. § 3-6-301(21), "lobbyists" as defined by T.C.A. § 3-6-301(18), and "employer[s] of a lobbyist" as defined by T.C.A. § 3-6-301(8).

As these rules are being promulgated by publication, no comments regarding these rules have been received by the Tennessee Ethics Commission. However, an effective petition requesting a rulemaking hearing may be filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which these rules are published.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Tennessee Attorney General Opinion 06-025 and the cases cited therein directly relate to the new rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to have a minimal fiscal impact on the Tennessee Ethics Commission.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mr. Bruce Androphy, Executive Director of the Tennessee Ethics Commission, David Himmelreich, General Counsel for the Tennessee Ethics Commission, and I as Assistant General Counsel for the Commission, possess substantial knowledge and understanding of these rules.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Bruce Androphy, David Himmelreich, or I will explain the rules at any scheduled meeting of the Government Operations Committee.

- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Any of the above persons, including myself, may be reached at the Tennessee Ethics Commission, 201 Fourth Avenue North, Suite 1820, Nashville, TN 37219 (telephone: 253-8634).

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.